

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (“Board”), pursuant to the authority set forth in D.C. Official Code § 25-211(b) (2009 Supp.), hereby gives notice of the adoption of proposed rules that create a new section 2102 of Title 23 of the District of Columbia Municipal Regulations (DCMR) to clarify what constitutes “off-site food sales” for the purposes of determining whether a restaurant or hotel is meeting either of the statutory food requirements. The proposed rulemaking clarifies that food sales occurring outside of the licensed premises at catered events or street festivals constitute off-site food sales. Under the proposed rules, off-site food sales do not include those food sales generated at the licensed establishment as either take-out or delivery food items.

The Board gives notice of its intent to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Pursuant to D.C. Official Code § 25-211(b) (2009 Supp.), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until the expiration of the ninety (90) day period of Council review or upon approval by Council resolution, whichever occurs first.

The proposed rulemaking was adopted by the Board on March 10, 2010 by a three (3) to zero (0) vote. A public hearing on this proposed rulemaking will occur on July 21, 2010 at 2:00 p.m. at 1250 U Street N.W., 2nd Floor.

Title 23 DCMR, Chapter 21 (Restaurant and Hotel Food Sales Requirements), is amended by adding a new section 2102 to read as follows:

2102 OFF-SITE FOOD SALES

- 2102.1 Off-site food sales by a licensee under a license, class C/R, D/R, C/H, or D/H, shall not be included for the purposes of calculating whether an establishment is meeting either of the food sales requirements set forth in D.C. Official Code § 25-101(43), § 25-113 or this chapter.
- 2102.2 Food sales occurring outside of the licensed premises at catered events or street festivals shall be considered off-site food sales. Food sales generated at the licensed establishment as either take-out or delivery food sales shall not be considered off-site food sales.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 1250 U Street N.W., 3rd Floor, Washington, D.C. 20009. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 17 of the District of Columbia Health Professional Recruitment Program Act of 2005, effective March 8, 2006 (D.C. Law 16-71; D.C. Official Code § 7-751.16), and Mayor's Order 2009-176, dated October 13, 2009, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Title 22-B of the District of Columbia Municipal Register (DCMR) in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

The proposed rulemaking will amend Title 22-B by adding a new Chapter 61 to establish rules for the Health Professional Recruitment Program.

Title 22-B (Public Health and Medicine) of the DCMR is amended by adding a new Chapter 61 to read as follows:

CHAPTER 61 HEALTH PROFESSIONAL RECRUITMENT PROGRAM**6100 GENERAL PROVISIONS**

- 6100.1 The provisions of this chapter shall apply to an applicant for, or recipient of, loan repayment funds under the District of Columbia Health Professional Recruitment Program Act of 2005, effective March 8, 2006 (Act) (D.C. Law 16-71; D.C. Official Code § 7-751.01 *et seq.*).
- 6100.2 The Program was established for the purpose of recruiting health professionals to provide services in a Medically Underserved Area (MUA) or a Health Professional Shortage Area (HPSA) within the District by paying a percentage of a participant's tuition and educational expenses through loan repayment. The amount of loan repayment is set forth in D.C. Official Code § 7-751.08.
- 6100.3 The Program is administered by the Department of Health, which is authorized to:
- (a) Establish the application process;
 - (b) Certify acceptable Service Obligation Sites;
 - (c) Conduct surveys to ensure participant compliance with the Program;
 - (d) Disburse all awarded funds; and
 - (e) Administer any other necessary Program functions.

- 6100.4 Payment to persons eligible for the Health Professional Recruitment Program shall be subject to the availability of funds in the Health Professional Recruitment Fund established by section 16a of the Act (D.C. Official Code § 7-751.16a).

6101 APPLICATION FOR PARTICIPATION IN PROGRAM

- 6101.1 An applicant proposing to provide services at an approved Service Obligation Site that is not in a MUA is eligible for loan repayment if the applicant provides services related to the HPSA designation where the Service Obligation Site is located. HPSA designations are set forth in section 6108.5. For example, a dentist applicant would qualify for loan repayment if the Service Obligation Site was a Dental HPSA but would not be eligible if the Service Obligation Site provided dental services but was not located in a Dental HPSA.
- 6101.2 An applicant for the Health Professional Recruitment Program shall apply during one (1) of two (2) application periods. The first application period shall be from January 1 to January 31 of each calendar year, and the second application period shall be from June 1 to June 30 of each calendar year.
- 6101.3 Application shall be made on a form prescribed by the Director and shall include such information and documents the Director may require.

6102 RENEWAL OF PARTICIPATION IN PROGRAM

- 6102.1 A participant in the Health Professional Recruitment Program who has completed the original contracted two (2) year term of service may apply to renew his or her contract for up to two (2) additional years of service. The maximum term of service of a participant in the Program shall be four (4) years, including the original contracted term and any renewal terms.
- 6102.2 A participant seeking to renew his or her contract shall:
- (a) Request a one (1) year contract modification for each additional year of service requested;
 - (b) Request the one (1) year contract modification at least three (3) months before the expiration of the current original contract or contract modification;
 - (c) Provide verification of personal and employment information at least thirty (30) days before the expiration of the current contract;
 - (d) Provide at least thirty (30) days before the expiration of the current contract a letter signed by the participant's employer confirming the

participant's continued employment for the period of the proposed contract addendum; and

- (e) Provide current professional licensing verification at least thirty (30) days before the expiration of the current contract.

6103 REVIEW AND APPROVAL OF APPLICATION

6103.1 The Director shall review each application and provide a written decision to each applicant by March 1 for the first application period and by September 1 for the second application period. The Director shall provide a written reason for rejection of an application. The Director shall review and select applications for participation based on the following:

- (a) Professional qualifications and relevant experience, including:
 - (1) Board eligibility or certification in a specialty;
 - (2) Professional achievements; and
 - (3) Other indicators of competency received from supervisors, department chairs, and program directors; and
- (b) A demonstrated commitment to serve in a HPSA or MUA.

6103.2 The Director shall give priority in making an offer of participation to an applicant and shall give priority to renewing the contract of an existing participant based on the following:

- (a) District of Columbia residency;
- (b) Graduation from a District of Columbia health profession school or program;
- (c) Residence within a HPSA or MUA within the District of Columbia;
- (d) Immediate eligibility or availability for service;
- (e) Commitment to longer periods of service;
- (f) Service at a site that is also a qualified Medical Homes DC provider; and
- (g) Target percentages of participants in health disciplines as follows:

- (1) Sixty percent (60%) participation by primary health care providers;
- (2) Twenty percent (20%) participation by mental health care providers; and
- (3) Twenty percent (20%) participation by dental health providers.

6103.3 The Director may deny an application for an otherwise qualified applicant if:

- (a) The application is for a health care provider in an over-represented discipline;
- (b) There are insufficient funds available in the Fund established by section 16a of the Act; or
- (c) Either or both of the conditions in paragraphs (a) and (b) apply and the applicant receives low priority under section 6103.2.

6103.4 If the Director receives qualified applications that exceed either the total funding availability or an individual discipline threshold, the Director shall prioritize Program participation by giving priority according to the following criteria:

- (a) A higher application score shall receive higher priority;
- (b) If the number of Program participants already assigned to the applicant's chosen practice site or organization is high, then the application shall receive lower priority;
- (c) If the applicant will serve in an area where there is a documented provider shortage and higher need, then the application shall receive higher priority;
- (d) If the numbers of National Health Service Corps and or HPLRP participants already assigned to the applicant's chosen practice site or organization are high, then the application shall receive lower priority; and
- (e) Additional information provided by the primary care office about the application may affect priority of the applicant.

6104 RETENTION OF APPLICATIONS

6104.1 The Department shall not be required to keep on file a rejected application for more than two (2) months after the applicant is notified of his/her rejection.

- 6104.2 An applicant receiving notice of rejection may reclaim the application no later than two (2) months after notification.

6105 REAPPLICATION

- 6105.1 An applicant who is not accepted into the Program for any reason may re-apply during any subsequent application cycle.

6106 PARTICIPATION CONTRACTS

- 6106.1 Each participant in the Program shall sign a contract with the Department of Health setting out the terms and conditions of his or her participation.

- 6106.2 An applicant who receives preliminary notice of approval of his or her application shall sign a contract and return it to the Department of Health for the Director's signature by March 15 for an application submitted in the first application period and by September 15 for an application submitted in the second application period.

- 6106.3 The contract start dates shall be April 1 for the first application period and October 1 for the second application period.

6107 INVOICES

- 6107.1 A participant shall submit an invoice for each quarter of service on a form provided by the Department of Health.
- 6107.2 Once completed with all required information, the form shall be scanned and attached to an e-mail to the appropriate Department personnel.
- 6107.3 An invoice for any period of service that began before September 30 of any calendar year shall be submitted by October 30 of that calendar year. Payment for service begun before September 30 and submitted after October 30 is not guaranteed and depends on the availability of funds in the Fund for the fiscal year ending on September 30.
- 6107.4 A participant who fails to submit an invoice pursuant to section 6102.1 for two (2) consecutive service quarters shall be deemed in breach of contract and shall be subject to the penalties provided in section 14 of the Act.

6108 ELIGIBLE SITES

- 6108.1 In order to be eligible to participate in the Program, the applicant or participant must provide primary care, mental health, or dental services at a site approved by the Director as a Service Obligation Site.

- 6108.2 The following are eligible to become Service Obligation Sites:
- (a) A nonprofit entity located in a Health Professional Shortage Area or Medically Underserved Area within the District that provides primary care, mental health, or dental services to District residents regardless of their ability to pay;
 - (b) A Department of Health program that provides primary care, mental health, or dental services in a Health Professional Shortage Area or Medically Underserved Area within the District;
 - (c) A Department of Mental Health program that provides primary care, mental health, or dental services in a Health Professional Shortage Area or Medically Underserved Area within the District;
 - (d) A District of Columbia Public School (DCPS) located in a Health Professional Shortage Area or Medically Underserved Area within the District; and
 - (e) A District of Columbia Department of Corrections (DOC) site located in a federally designated Health Professional Service Area or Medically Underserved Area within the District of Columbia that provides primary care, mental health, or dental services to District of Columbia residents regardless of ability to pay.
- 6108.3 An eligible site that participates, or seeks to participate, in the Program shall submit a site certification application and renew its certification annually at the start of the District's fiscal year (October 1).
- 6108.4 A health facility should verify with the Health Resources and Services Administration of the U.S. Department of Health and Human Services or the Department of Health that it resides in a MUA or Health Professional Shortage Area appropriate for the facility and the services the facility offers before submitting an application.
- 6108.5 A Health Professional Shortage Area (HPSA) may be designated as:
- (a) A Primary Care HPSA;
 - (b) A Dental HPSA;
 - (c) A Mental Health HPSA; or
 - (d) Any combination of the designations listed in paragraphs (a) through (c).

- 6108.6 A health facility may be approved as a Service Obligation Site for each HPSA designation for which it qualifies. For example, a facility that provides primary care, dental, and mental health services and is located in an area that is designated only as a Dental HPSA and a Mental Health HPSA could qualify as a Service Obligation Site for dental and mental health services but not for primary care services.

6199 DEFINITIONS

- 6199.1 For the purpose of this chapter, the following terms shall have the meanings ascribed below:

Act—the District of Columbia Health Professional Recruitment Program Act of 2005, effective March 8, 2006 (D.C. Law 16-71; D.C. Official Code § 7-751.01 *et seq.*).

Director—the Director of the Department of Health.

Fund—the fund established by section 16a of the Act (D.C. Official Code § 7-751.16a).

Health Professional Shortage Area or HPSA—a geographic area in the District of Columbia designated by the United States Department of Health and Human Services as lacking a sufficient number of primary care, dental, or mental health professionals to provide care for residents of the area or community.

Medically Underserved Area or MUA—a geographic area in the District of Columbia designated by the United States Department of Health and Human Services as medically underserved.

Participant—a person who is in an eligible health profession and has signed a contract to provide health care services in a Service Obligation Site.

Program—the District of Columbia Health Professional Recruitment Program established by section 3 of the Act (D.C. Official Code § 7-751.03).

Service obligation site—a nonprofit health facility or a District of Columbia Department of Health or Department of Mental Health program that provides primary health, mental health, or dental services located in a federally designated Health Professional Shortage Area or Medically Underserved Area within the District of Columbia that provides care to District of Columbia residents regardless of ability to pay.

Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 4th Floor, 825 North Capitol Street, NE, Washington, DC 20002, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, except holidays, between the hours of 8:15 A.M. and 4:45 P.M. at the same address.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in sections 3(b)(8) and (11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§38-2602(b)(8) and (11)) (2009 Supp.); sections 101 *et seq.* of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §38-2561.01 *et seq.*) (2009 Supp.); and Mayor's Order 2007-149 (June 28, 2007), and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 805; D.C. Official Code §§38-202 *et seq.*) (2001 and 2009 Supp.), hereby gives notice of her intent to repeal section E-3813, chapter 38 of Title 5-E of the District of Columbia Municipal Regulations (DCMR) and replace it with a new chapter 28 of Title 5-A of the DCMR, entitled "Certificates of Approval for Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia and Special Education Rates" in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*. This proposal takes into consideration public comments received on the earlier proposed rulemaking for special education nonpublic schools and programs certificates of approval published in the *D.C. Register* at 56 DCR 5112 (June 26, 2009); and comments received in connection with an earlier rate proposal for nonpublic special education schools or programs published in the *D.C. Register* at 54 DCR 7265 (July 29, 2007).

This proposed rulemaking creates uniform requirements for nonpublic special education schools or programs, including a residential treatment or psychiatric residential treatment facility operating an educational program, serving a District of Columbia student with a disability as defined by the Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773; 20 U.S.C. § 1400 *et seq.*). The proposed rulemaking also establishes a uniform rate structure for special education nonpublic special education schools or programs, evaluations and related services to be paid by the District of Columbia, and has taken into account a number of factors including historical data. The proposed rates align with the annual District of Columbia Uniform Per Student Funding Formula and rates issued by the District of Columbia Department of Health Care Finance. OSSE will publish these rates each year and make the rates available to the public on the OSSE website. For purposes of this proposal, OSSE will post on its website rate schedules which would conform to formulas established in this proposed rulemaking. Upon final adoption of chapter 28, Title 5-A of the DCMR, current section E-3813 of chapter 38, Title 5-E of the DCMR will be deleted; and OSSE will no longer pay for services based upon the fee schedule included in the District of Columbia Public School Chancellor's rate directive, Blackman-Jones Directive No. 1, effective July 18, 2008.

Title 5-A of the DCMR is amended by adding a new chapter 28 to read as follows:

**CHAPTER A-28 CERTIFICATES OF APPROVAL FOR NONPUBLIC SPECIAL
EDUCATION SCHOOLS AND PROGRAMS SERVING
STUDENTS WITH DISABILITIES FUNDED BY THE DISTRICT
OF COLUMBIA AND SPECIAL EDUCATION RATES**

A-2800 AUTHORITY AND PURPOSE

- A-2800.1 This chapter is promulgated pursuant to section 101 *et seq.* of the Placement of Students with Disabilities in Nonpublic Special Schools Act, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§38-2561.01 through 38-2561.11) (2009 Supp.) (Placement Act); Mayor's Order 2007-149 (June 28, 2007); sections 3(b)(8) and (11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2602(b)(8) and 38-2602(11)) (2009 Supp.); and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 805; D.C. Official Code §§38-201 *et seq.*)(2001 and 2009 Supp.).
- A-2800.2 The Office of the State Superintendent of Education (OSSE) may issue a certificate of approval to a nonpublic special education school or program, including a residential treatment or psychiatric residential treatment facility (PRTF) operating an educational program, serving students with disabilities funded by the District of Columbia. The purpose of the certificate of approval process is to maintain oversight of nonpublic special education schools or programs, including residential treatment or psychiatric residential treatment facilities, to ensure that every District of Columbia student with a disability is afforded a high quality education in the least restrictive environment.
- A-2800.3 Any school or program defined within this chapter as a nonpublic special education school or program shall not accept a referral or placement of a District of Columbia student with a disability whose education is funded by the District of Columbia government unless it receives and maintains a certificate of approval issued by OSSE; except if a student is ordered placed and located at a specific uncertified school by order of a court or a due process hearing officer decision pursuant to 34 C.F.R. 300.513; and then only in exceptional circumstances where the student, because of the student's unique and highly specialized needs, cannot be served by a nonpublic special education school or program with a certificate of approval.
- A-2800.4 A nonpublic special education school or program with a current certificate of approval issued by OSSE shall comply with the provisions of this chapter unless otherwise exempted by District of Columbia laws or regulations.
- A-2800.5 A nonpublic special education school or program without a certificate of approval that accepts a District of Columbia student ordered placed and located specifically in that school or program by a court of law or due process hearing officer decision must apply for a certificate of approval within ninety (90) calendar days after the date of accepting that student and must immediately comply, at a minimum, with the following sections of this chapter as to the student placed before accepting the student: sections A-2805 through A-2822; sections A-2830 through A-2834; A-2836; A-2837; and A-2844, unless otherwise exempted by OSSE. The nonpublic

special education school or program shall give OSSE an assurance as to its compliance under this section before accepting the student.

- A-2800.6 If OSSE denies an application for, refuses to renew, suspends or revokes a certificate of approval for a nonpublic special education school or program subject to this chapter, the following shall occur:
- (a) OSSE shall provide the sending local education agency (sending LEA) with written notification of its decision;
 - (b) The sending LEA shall schedule an Individualized Education Program (IEP) team meeting for each District of Columbia student and notify the parent that the nonpublic school or program has failed to qualify for a certificate of approval; and
 - (c) The IEP team shall determine an appropriate placement for the student.

- A-2800.7 The denial of an application, refusal to renew, suspension or revocation of a certificate does not invalidate a student placement by court order or hearing officer decision (HOD). The sending LEA shall be responsible for seeking a modification of the court order or HOD if an IEP team determines that a placement is not appropriate.

A-2801 AWARD OF A CERTIFICATE OF APPROVAL

- A-2801.1 In determining whether to grant or renew a certificate of approval, OSSE shall review the applicant's program for compliance with the standards of this chapter and other applicable laws and regulations, including, without limitation, the requirements of the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.
- A-2801.2 A nonpublic special education school or program shall not be granted or allowed to maintain a certificate of approval unless it obtains and maintains documentation verifying compliance with all applicable fire, safety, building code, health, and sanitation requirements.
- A-2801.3 A certificate of approval does not relieve a nonpublic special education school or program of its obligation to comply with all applicable local or federal statutory or regulatory requirements. OSSE may withhold, revoke, or deny approval consistent with the provisions of this chapter if, in its discretion, circumstances warrant such action.

A-2802 VALIDITY OF CERTIFICATE OF APPROVAL

- A-2802.1 A certificate of approval is valid for up to three (3) years after the date of issuance. The expiration date shall be clearly indicated on the certificate.

- A-2802.2 In its discretion, OSSE may grant a certificate of approval for a period shorter than three (3) years. In such a circumstance, the nonpublic special education school or program shall be informed in writing of the reasons for the decision.
- A-2802.3 OSSE may issue a provisional certificate of approval that shall continue in effect pending OSSE's review of an application for renewal that is timely submitted to OSSE in conformance with this chapter, unless OSSE provides written notification of other action affecting the status of the certificate of approval.
- A-2802.2 A certificate of approval shall be considered void if:
- (a) The nonpublic special education school or program ceases operating educational programs or files for bankruptcy or dissolution;
 - (b) The certificate of approval expires and an application for renewal has not been completed and submitted within the applicable timelines for a renewed certificate of approval; or
 - (c) The certificate of approval is revoked by OSSE due to noncompliance with the standards set forth in this chapter.

A-2803 LEVELS OF APPROVAL

- A-2803.1 OSSE may, at its discretion, grant a certificate of approval that confers full approval status, probationary approval status, or provisional approval status. OSSE shall grant full approval status to a nonpublic special education school or program based upon a finding that the application meets all of the standards and requirements of this chapter.
- A-2803.2 In no case shall approval at any level be awarded unless the nonpublic special education school or program demonstrates to the satisfaction of OSSE that the health and safety of students is protected and that the school or program is able to implement the provisions in each student's IEP.
- A-2803.3 A nonpublic special education school or program shall operate in a manner consistent with the specifications of the certificate of approval and may not extend, assign, or transfer a certificate of approval status to additional operating sites.
- A-2803.4 A nonpublic special education school or program shall notify OSSE in writing and submit an application to amend its certificate of approval before a change in circumstances occurs. A change in circumstances includes without limitation, a change of ownership, accreditation status, location, or other form of change in operation that is inconsistent with information or specifications submitted to

OSSE. If a nonpublic special education school or program expects to experience a change in circumstances, it shall:

- (a) Notify OSSE in writing at least sixty (60) calendar days before a change in circumstance(s); and
- (b) Submit to OSSE specific documentation to describe the change, including any additional information requested by OSSE.

- A-2803.5 OSSE may place a nonpublic special education school or program on probationary approval status at any time, based upon circumstances which, in OSSE's discretion, compromise the school or program's ability to provide a safe, healthy, and appropriate educational environment, or to comply with the standards of this chapter. A school or program in probationary approval status shall complete and document in writing specific corrective actions within timelines specified by OSSE. Based on evidence of compliance with the corrective action(s), OSSE may revoke or reinstate the nonpublic school or program certificate of approval with full approval status, or probationary approval status with specific timelines for additional correction.
- A-2803.6 A nonpublic special education school or program with a probationary certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. 300.513.
- A-2803.7 OSSE may grant provisional approval status for a time period not to exceed six (6) months after the date of approval of an initial application. OSSE may revoke provisional approval status at any time for any reason.
- A-2803.8 If provisional approval status is granted, OSSE shall indicate the specific conditions and timeline that the nonpublic special education school or program shall meet to establish full approval status.
- A-2803.9 If OSSE finds that the nonpublic special education school or program has failed to meet the specified conditions within the provisional approval status period or does not grant full approval status, the provisional approval status shall expire automatically.
- A-2803.8 A nonpublic special education school or program with a provisional certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. 300.513.

A-2804 CERTIFICATION LIST AND MONITORING REPORTS

- A-2804.1 OSSE shall publish and make available the list of nonpublic special education schools or programs, including the current level of approval of each school or program.
- A-2804.2 OSSE shall produce at least one (1) written monitoring report for each nonpublic special education school or program during the period of the school or program's certificate of approval. Such reports shall not contain personally identifiable student information.

A-2805 CURRICULUM REQUIREMENTS

- A-2805.1 Nonpublic special education schools or programs that serve District of Columbia students with disabilities shall provide special education and related services in accordance with the student's IEP and afford the student all of the rights he or she would have if served by a public agency.
- A-2805.2 Nonpublic special education schools or programs that serve District of Columbia students with disabilities shall ensure instructional alignment with the District of Columbia's learning standards, grades, promotion, and graduation requirements, consistent with Title 5 of the DCMR, including compliance with any amendments to these respective policies, procedures and rules.
- A-2805.3 Nonpublic special education schools or programs shall ensure all students are appropriately included in the statewide assessment, either by taking the statewide general assessment or an alternate assessment approved by OSSE, in accordance with guidelines established by OSSE.

A-2806 LEARNING TIME

- A-2806.1 The school year of a nonpublic special education school or program shall include a minimum of one hundred eighty (180) regular instructional school days, exclusive of any Extended School Year (ESY) period mandated by an IEP.
- A-2806.2 Each regular instructional school day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six (6) hour minimum instructional school day requirement shall not be applicable to any evening school program, prekindergarten program, or other alternative program approved by OSSE.

A-2807 RESOURCES AND MATERIALS

- A-2807.1 A nonpublic special education school or program shall provide the facilities, textbooks, equipment, technology, materials, and supplies needed to provide the

special education and related services specified by the IEPs of its enrolled students.

A-2807.2 A nonpublic special education school or program shall provide all resources and materials required to accommodate students with disabilities in obtaining, as specified in their IEPs, a diploma, GED, or alternative certificate of completion.

A-2807.3 A nonpublic special education school or program that does not meet the necessary resources and materials requirements shall not be eligible to apply for a certificate of approval.

A-2808 INDIVIDUALIZED EDUCATION PROGRAMS

A-2808.1 The sending LEA responsible for the District of Columbia student with a disability placed in a nonpublic special education school or program and the nonpublic special education school or program are both responsible for ensuring that the student has a complete and current IEP. A nonpublic special education school or program shall work with the sending LEA to maintain compliance with the IDEA as follows:

- (a) If the nonpublic special education school or program becomes unable to implement any portion of the student's IEP, including compensatory education, the school or program shall immediately notify the sending LEA in writing and consult with the sending LEA about whether an IEP team meeting is required;
- (b) If the nonpublic special education school or program becomes aware that the student's IEP is not being fully implemented due to factors beyond its control (for example, transportation), the school or program shall immediately notify the sending LEA in writing and consult with the sending LEA about whether an IEP team meeting is required;
- (c) If it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or any other timeline specified in the IDEA has lapsed or will imminently lapse, the school or program shall immediately notify the sending LEA in writing; and
- (d) In the event that the sending LEA must call an IEP team meeting, whether as a result of a situation outlined in paragraphs (a) and (b) above or otherwise, the nonpublic special education school or program shall assist the sending LEA in convening the meeting and respect the due process rights afforded to a student and his or her parents under the IDEA.

A-2808.2 The sending LEA shall ensure that all data required by OSSE regarding a student with a disability enrolled in a nonpublic special education school or program is entered into the District of Columbia's Special Education Data System (SEDS)

and that such data is accurate, up-to-date and complete. OSSE shall provide SEDS access to a nonpublic special education school or program limited to the students enrolled in the school or program and in a manner consistent with the Family Educational Rights and Privacy Act of 1974 (FERPA). Each nonpublic special education school and program shall cooperate with the LEA to maintain each enrolled student's IEP in SEDS. The failure to maintain current data shall be considered a failure to cooperate, as will other actions or omissions that lead to incomplete records. Under no circumstances shall a nonpublic special education school or program issue a change in location using SEDS.

- A-2808.3 A nonpublic special education school or program shall implement all components of each student's IEP, including any items of compensatory education, unless it has been specifically agreed by the IEP team and documented in writing that an entity other than the school or program will implement an item or items on the IEP (e.g., after-school tutoring).
- A-2808.4 Pursuant to 34 C.F.R. 300.325I, the sending LEA shall remain responsible for compliance with the requirements of the IDEA for students served by nonpublic special education schools or programs, and OSSE shall monitor the sending LEA's compliance with these requirements.
- A-2808.5 In the event that the sending LEA has an agreement with the nonpublic special education school or program for the nonpublic special education school or program to administer or arrange assessments (including reevaluations) to determine continued eligibility for special education and related services or for any other purpose under the IDEA:
- (a) The nonpublic special education school or program shall administer or arrange for the provision of assessments consistent with the IDEA and any hearing officer decision governing the assessment pursuant to 34 C.F.R. 300.513; and
 - (b) The nonpublic special education school or program shall submit an invoice to OSSE for the assessment in the next invoicing period at OSSE established rate in the manner prescribed by OSSE's guidance or agreements. In the event that OSSE has not established a rate for the assessment in question, the nonpublic special education school or program must first notify OSSE and receive written approval prior to administering or arranging for the assessment. OSSE shall only pay for assessments at an established rate consistent with the Placement Act.
- A-2808.6 Pursuant to 34 C.F.R. 300.325(b), IEP team meetings may be initiated and conducted by the nonpublic special education school or program at the request or discretion of the sending LEA.

- (a) The nonpublic special education school shall provide written notification to and invite the sending LEA to the student's IEP team meeting.
- (b) The notice shall include the time, date, and location of the meeting.
- (c) The nonpublic special education school shall document its attempts to invite the sending LEA to the IEP team meeting, as well as the LEA's involvement with any IEP team decision and the LEA's agreement with any proposed changes to the IEP which result from any meeting.

A-2808.7 As part of the IEP team process, staff members of the nonpublic special education school or program who are members of the student's IEP team shall ensure that each IEP:

- (a) Meets all the requirements of the IDEA, 20 U.S.C. §1414(d); and 34 C.F.R. 300; 320; 300.321; 300.322 and 300.324;
- (b) Contains a Behavior Intervention Plan (BIP), whenever appropriate, that is based on a Functional Behavior Assessment (FBA) and includes a plan for crisis management; and
- (c) Provides for extended school year services (ESY) only if the IEP team decides, on an individual basis, that ESY services are necessary for the provision of a free appropriate public education (FAPE) to the student.

A-2808.8 A nonpublic special education school or program shall ensure that the appropriate members of its staff attend all IEP team meetings related to District of Columbia students. If an interpreter is necessary to ensure parent participation, the nonpublic special education school or program shall access the necessary services to ensure that it meets the requirements of the District of Columbia Language Access Act, D.C. Law 15-167, effective April 1, 2004. In the event an interpreter is not available, the nonpublic special education school or program shall reschedule the meeting.

A-2808.9 A nonpublic special education school or program shall monitor how each student is making progress toward meeting the annual goals of the IEP and produce written reports for the parent(s) and the sending LEA on at least a quarterly basis.

A-2808.10 A nonpublic special education school or program shall ensure that the confidentiality of student records is kept strictly in accordance with the FERPA, and any other applicable privacy laws and regulations.

A-2809 IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS

- A-2809.1 A nonpublic special education school or program shall implement all services ordered by any Hearing Officer Decision (HOD) pursuant to 34 C.F.R. 300.513 and/or a Settlement and Mediation Agreements (SA) entered into pursuant to 34 C.F.R. 300.510(d) and 300.506(b)(6) with respect to each attending student, including all assessments and any items of compensatory education, unless it is specifically agreed and documented by the IEP team that a service or services shall be provided by an entity other than the nonpublic special education school or program (e.g. after-school tutoring). Compensatory education shall be invoiced to and paid for by the LEA that is a party to the HOD or SA.
- A-2809.2 In the event that the nonpublic special education school or program becomes unable to implement any aspect of a student's HOD or SA, including by reason that the language of a HOD or SA is unclear, not sufficiently specific or not in accordance with subsequent decisions made by the IEP team, the nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA, consult with the LEA regarding whether an IEP team meeting is required and assist the LEA with any IEP team meeting it may schedule.
- A-2809.3 A nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA if it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or other compliance requirement of a HOD or SA has lapsed or will imminently lapse. The nonpublic special education school or program shall also consult with the LEA that is a party to the HOD or SA, regarding whether an IEP team meeting is required and assist the LEA with any IEP team meeting it may schedule.

A-2810 TRANSITIONS TO THE LEAST RESTRICTIVE SETTING

- A-2810.1 In accordance with the IDEA requirement of placing students in the least restrictive environment as well as the Placement Act, IEP planning and service delivery by sending LEAs and nonpublic special education schools or programs shall be designed to support a transition of the student to a less restrictive setting when determined appropriate by the IEP team. The nonpublic special education school or program shall ensure that the IEP teams for students enrolled at the school or program consider a student's transition status at least annually as a component of annual IEP review.
- A-2810.2 When an IEP team member believes that a District of Columbia student is ready for a more integrated setting, an IEP team meeting shall be convened to discuss a change in placement, consistent with the IDEA.

A-2811 REPORTING SUSPECTED ABUSE OR NEGLECT

- A-2811.1 A nonpublic special education school or program shall make reports of suspected neglect or abuse as defined in D.C. Official Code §§16-2301(9) and (23), respectively (including compliance with the law on compulsory school attendance) as required by all relevant federal, state and local law.

A-2812 STATE-WIDE ASSESSMENTS

- A-2812.1 In accordance with chapter A-23 and section 3019 of chapter E-30 of Title 5 of the DCMR, every nonpublic special education school or program shall ensure that every District of Columbia student with an IEP enrolled in a nonpublic special education school or program is appropriately included in either the District of Columbia statewide assessment system or alternate assessment approved by OSSE.
- A-2812.2 A nonpublic special education school or program shall ensure that statewide assessments are administered according to the test security guidelines published by OSSE.
- A-2812.3 The nonpublic special education school or program shall ensure a student's IEP shall include a specific finding that the student is eligible for participation in the alternate assessment based upon the alternate academic achievement standards, OSSE state level guidelines for participation in alternate assessments, and other applicable guidance issued by OSSE.
- A-2812.4 Unless specifically required by a student's IEP, the nonpublic special education school or program and the sending LEA shall not substitute an alternate assessment based on alternate academic achievement standards for the general statewide assessment for any student.

A-2813 GRADES AND PROMOTIONS

- A-2813.1 A nonpublic special education school or program shall adhere to the grades and promotion policies and procedures of the sending LEA in which each student is enrolled as well as state graduation requirements.

A-2814 INDIVIDUALIZED BEHAVIOR SUPPORT AND DISCIPLINE

- A-2814.1 Behavior support programs and plans used by a nonpublic special education school or program shall be based on an individual behavior intervention plan and the utilization of school-wide positive behavior intervention supports. If the behavior of a student impedes the student's learning or the learning of other students, the IEP team shall consider the use of positive behavioral supports and other strategies to address that behavior in conformance with the IDEA and its implementing regulations (20 U.S.C. §1414(d)(3)(B)(i); 34 C.F.R. 300.324(a)(2)(i)). Further, if the student's behavior that impedes learning is not addressed in the IEP, the IEP team must review and revise the IEP to ensure that

the student receives appropriate positive behavioral interventions and supports and other strategies (34 C.F.R. 300.324(a)(2)(i) and 300.324(a)(3)(i)).

- A-2814.2 All nonpublic special education schools and programs must ensure compliance with the IDEA's discipline procedures and related procedural safeguards. Any behavioral intervention strategies shall be designed to enhance the delivery of the IEP to support minimal interruption of the academic program. When determining whether a change in placement is appropriate for a student with a disability who violates a code of student conduct, the nonpublic special education school or program shall implement procedures consistent with the IDEA and its implementing regulations (20 U.S.C. §§1415(k)(1) and (7), 34 C.F.R. 300.530).
- A-2814.3 All nonpublic special education schools and programs shall be prohibited from using demeaning, violent or coercive treatment with District of Columbia students. Nonpublic special education schools and programs shall not use restraints or seclusion in any form on District of Columbia students, other than in an emergency circumstance as defined below in section A-2816 below. Seclusion and restraint shall not be used, under any circumstances, as a means of coercion, discipline, convenience or retaliation by staff with District of Columbia students. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.

A-2815 STUDENT-INITIATED TIME AWAY FROM STRUCTURED ACTIVITY

- A-2815.1 A nonpublic special education school or program shall allow students to initiate time away from structured activity as a means of regaining self-control. Student-initiated time away from structured activity:
- (a) Shall occur in designated areas within the classroom;
 - (b) Be documented in a student's Behavior Intervention Plan;
 - (c) Be monitored for effectiveness; and
 - (d) May not be imposed upon a student as a form of seclusion or punishment.

A-2816 PHYSICAL AND CHEMICAL RESTRAINTS

- A-2816.1 The use of physical restraints is prohibited in all nonpublic special education schools and programs except in emergency circumstances, which are defined as circumstances that meet all of the following criteria:

- (a) The use of the restraint is included in the student's IEP to address specific behaviors under defined circumstances, and the use by appropriate staff is therefore consistent with the student's IEP;
- (b) The intervention is necessary to protect the student or other person from imminent, serious physical harm; and
- (c) Other less intrusive, nonphysical interventions have failed or been determined inappropriate.

A-2816.2 Any physical restraint shall be applied only by nonpublic special education school or program personnel who are trained and certified in the appropriate use of specific, authorized techniques. Copies of those certifications shall be maintained on file at the nonpublic special education school or program.

A-2816.3 The use of physical restraints shall be limited to the use of reasonable force and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student or other person is no longer in imminent danger. Nonpublic special education school or program personnel shall provide the student with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint. A member of the staff shall personally observe the student during the entire duration of the use of the restraint in order to assess the need for continued restraint.

A-2816.4 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a student's refusal to comply with a nonpublic special education school or program rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.

A-2816.5 No physical restraint shall be administered if the student has a medical or psychological condition contraindicated to restraint. No physical restraint shall be administered in such a way that the student's breathing or speaking is restricted. During the restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. The restraint shall be released immediately upon a determination by a staff member that the student or other person is no longer at risk of causing imminent, serious physical harm. Upon release, a staff member shall assess the student to determine if medical attention is required.

A-2816.6 If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless the staff member determines that such freedom appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer at risk of causing imminent, serious physical harm.

A-2816.7 The use of restraint practices with a student whom the nonpublic special education school or program knows has been sexually or physically abused is prohibited.

A-2816.8 A nonpublic special education school or program shall only use a chemical restraint on a District of Columbia student to the extent the chemical restraint is determined to be medically necessary. Any usage of a chemical restraint must be ordered by a physician, determined to be medically necessary, and administered in conformance with the student's medical treatment plan.

A-2817 MECHANICAL RESTRAINT

A-2817.1 A nonpublic special education school or program shall not use any form of mechanical restraint on a District of Columbia student. Use of such restraints as a policy or practice shall be grounds for denying or revoking a certificate of approval.

A-2818 PRONE RESTRAINT

A-2818.1 A nonpublic special education school or program shall not use any form of prone restraint on a District of Columbia student. Use of such restraints as a policy or practice shall be grounds for denying or revoking a certificate of approval.

A-2819 SECLUSION

A-2819.1 A nonpublic special education school or program shall not use any form of seclusion on a District of Columbia student unless it is an emergency, as defined in section A-2816.1. Use of seclusion as a policy or practice shall be grounds for denying or revoking a certificate of approval.

A-2819.2 A space used for seclusion shall, at a minimum:

- (a) Be free of objects and fixtures with which a student could self-inflict bodily harm;
- (b) Provide school personnel an adequate view of the student from an adjacent area in accordance with this section; and
- (c) Provide adequate lighting, ventilation, and appropriate temperature controls.

A-2819.3 In the event of seclusion, nonpublic special education school or program personnel shall view a student placed in seclusion at all times, by remaining within sight of the student, consistent with section A-2819.5 herein, and shall

provide the student with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.

A-2819.4 Seclusion shall only be applied by nonpublic special education school or program personnel who are trained and certified in the appropriate use of the specific, authorized technique and knowledgeable of these regulatory provisions and any other guidance issued by OSSE. Copies of those certifications shall be maintained on file at the nonpublic special education school or program.

A-2819.5 Nonpublic special education school or program personnel shall continuously monitor a student placed in seclusion and speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education or other senior personnel shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.

A-2819.6 If the space used for seclusion has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building's fire alarm system is activated.

A-2820 RESTRAINT AND SECLUSION REPORTING AND FOLLOWUP

A-2820.1 If any form of restraint or seclusion is used, the nonpublic special education school or program shall prepare and file a written report consistent with the requirements of this section.

A-2820.2 A written incident report shall include the following information:

- (a) The student's name;
- (b) The date of the incident;
- (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion;
- (d) A description of relevant events leading up to the incident;
- (e) A description of any interventions used prior to the implementation of restraint or seclusion;
- (f) A log of events during the restraint, including the restraint technique(s) used;
- (g) A log of events during the seclusion;

- (h) A description of any injuries (whether to students, personnel or others) and/or property damage;
- (i) A list and signatures of the school personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and
- (j) A description of the planned approach to dealing with the student's behavior in the future.

A-2820.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion, and shall be placed in the student's permanent file within twenty four (24) hours of the incident.

A-2820.4 A copy of the written incident report shall be sent within twenty four (24) hours of the incident to the student's parent(s), the sending LEA and any other District of Columbia agency involved in the student's placement.

A-2820.5 The IEP team shall meet within ten (10) school days of the incident to consider the need for a FBA and BIP and to discuss non-physical and non-restrictive de-escalation strategies. If the student has a BIP in place, the IEP team shall review and revise as appropriate. If the student is unable or unwilling to attend the IEP team meeting, the nonpublic special education school or program shall meet with the student individually to discuss the incident as appropriate after consulting with the sending LEA.

A-2821 ATTENDANCE AND TRUANCY

A-2821.1 Consistent with D.C. Official Code §38-201 (2001), *et seq.*, a nonpublic special education school or program shall require that District of Columbia students enrolled in its program attend every regular instructional school day and remain in school until the official closure of the school day.

A-2821.2 A nonpublic special education school or program shall adhere to and maintain policies and procedures in conformance with the attendance and truancy policies and procedures of the sending LEA and the District of Columbia as set forth in chapter A-21 of Title 5 of the DCMR. The nonpublic special education school or program shall maintain a policy to allow a student to enter and attend school when the student arrives late for school.

A-2821.3 The nonpublic special education school or program shall submit to the sending LEA and OSSE the same attendance record at the time an invoice is submitted to OSSE for payment, and the roster shall accurately reflect each student's attendance for every regular instructional school day for the respective billing cycle, identifying excused and unexcused absences.

- A-2821.4 A nonpublic special education school or program shall notify the sending LEA in writing no later than two (2) instructional school days after the accrual of five (5) unexcused absences by a District of Columbia student in a marking period or similar time frame. A nonpublic special education school or program shall notify the sending LEA, in writing, no later than two (2) instructional school days after each accrual of ten (10) unexcused absences at any given time within the school year. In such cases,
- (a) the nonpublic special education school or program shall consult with the sending LEA regarding whether the current placement or location assignment is appropriate; and
 - (b) the sending LEA shall address the appropriateness of the location assignment, or need to convene an IEP team meeting as soon as possible to discuss the student's absences; intervention strategies; and appropriateness of the current placement.
- A-2821.5 The unexcused absence of a student from a nonpublic special education school or program for ten (10) or more instructional school days in a billing cycle shall result in payment only for tuition and related services provided on the instructional school days that the student is in attendance.
- a) Full invoice payment for a student shall resume based upon a submission of student attendance records verifying the student has not accrued ten (10) or more unexcused absences in that billing cycle, and has attended the nonpublic special education school or program for a majority of the instructional days in the billing cycle for which payment is requested.
- A-2821.6 Upon notification that an enrolled District of Columbia student with a disability has been hospitalized, incarcerated, detained, or placed at a residential facility for more than five (5) consecutive instructional school days, a nonpublic special education school or program shall:
- (a) Immediately notify the sending LEA in writing and request written information regarding the student's status and whether the student is to be withdrawn from the nonpublic special education school or program;
 - (b) Comply with any request by the receiving facility or the sending LEA for records or other input for the purpose of providing appropriate academic instruction and related services at the student's new placement within two (2) business days after such request; and
 - (c) Inform OSSE, in the attendance report accompanying its next invoice, of the student's status and the date on which the nonpublic special education school or program learned of the new placement. The final date

for which OSSE will provide payment is the date on which the nonpublic special education school or program received notice or the instructional school day prior the date the non-educational placement begins billing for educational expenses, whichever date is earlier. OSSE, in its discretion, may seek a credit or refund for any overlapping payments made.

- A-2816.7 At its discretion, and upon the request from a sending LEA, OSSE may provide payment to a nonpublic special education school or program in order to ensure that a student will be allowed to return to the school or program after a short-term (less than 30 calendar days) hospitalization.

A-2822 TERMINATION OF ENROLLMENT

- A-2822.1 A nonpublic special education school or program shall not terminate the enrollment of any student, unless and until the sending LEA has been informed, in writing, not less than fifteen (15) instructional school days prior to the proposed date of termination.
- A-2822.2 In the event of emergency circumstances, a nonpublic special education school or program shall not terminate the enrollment of any student, unless and until the sending LEA has been informed by the most expedient and appropriate means of communication with subsequent notice in writing.

A-2823 PERSONNEL QUALIFICATIONS

- A-2823. 1 A nonpublic special education school or program shall ensure that its organizational structure provides for the effective and efficient operation of the school or program, supervision of the school personnel and supervision of the students.
- A-2823.2 Effective no later than school year 2011-12, each member of the teaching staff shall hold a teaching certification from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.
- A-2823.3 Related service providers, whether employed or contracted by the nonpublic special education school or program, shall be appropriately certified, licensed or registered in their professional areas in alignment with requirements from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.
- A-2823.4 A nonpublic special education school or program shall maintain personnel files including, at minimum, resumes, attendance records, contracts, driver's licenses (or equivalent), and evidence of child protective service and criminal background checks. Access to personnel policies and files shall be available to OSSE upon

request, for the purposes of monitoring compliance with the requirements of this chapter.

- A-2823.5 All nonpublic special education schools and programs must conduct child protective service and criminal background checks on school personnel. A nonpublic special education school or program shall complete criminal background checks consistent with the District of Columbia requirements.
- A-2823.6 A nonpublic special education school or program shall not employ or contract with any attorney or advocate that represents the parent of any student with a disability in an IDEA proceeding under 34 C.F.R. 300.500 through 300.538. Reports of such conflict of interest shall be made consistent with the applicable rules of professional conduct.

A-2824 POLICIES AND PROCEDURES

- A-2824.1 A nonpublic special education school or program shall maintain on file, at minimum, written policies and procedures that address the following areas:
- (a) Mission statement;
 - (b) Positive behavior support policy statement and school-wide positive behavior plan, including a school-wide crisis plan;
 - (c) Emergency behavioral interventions;
 - (d) Participation of all District of Columbia students in state-wide assessments;
 - (e) Opportunities for enrolled students to interact maximally with their non-disabled peers during such time as they are enrolled in the nonpublic special education school or program;
 - (f) Reintegration plan for return to a less restrictive environment;
 - (g) Postsecondary transition services and transition planning;
 - (h) Truancy;
 - (i) Records management and confidentiality of student records;
 - (j) Process for a student or parent to make a complaint to the nonpublic special education school or program about the services the student is receiving, including how to access OSSE's state complaint process;

- (k) Employee policies including position descriptions, staff evaluation policies, staff discipline policies (including suspensions and dismissals), procedures for handling complaints by staff, and a statement of equal employment/educational opportunities in regard to race, color, creed, religion, national origin, sex, sexual orientation and disability;
- (l) A plan for meaningful participation by the parent and other family members authorized by the parent;
- (m) Supervision of students;
- (n) A plan for serving students with limited English proficiency;
- (o) Admissions and termination criteria;
- (p) Reporting of suspected child abuse or neglect;
- (q) Timely IEP implementation, including conducting and participating in IEP team meetings;
- (r) Conducting evaluations and reevaluations; and
- (s) Professional development plan which ensures adequate staff education on policies and procedures.

A-2825**PROFESSIONAL DEVELOPMENT AND TRAINING****A-2825.1**

A nonpublic special education school or program shall conduct personnel training at least once annually, regarding:

- (a) Research-based interventions;
- (b) Alignment of curriculum to state standards, including District Learning Standards;
- (c) Confidentiality of student information;
- (d) Procedural safeguards for students and parents;
- (e) Positive behavior support;
- (f) Restraints/seclusion policies in accordance with this chapter;
- (g) Reporting of suspected abuse or neglect;
- (h) Emergency procedures including evacuation and fire drills;

- (i) Truancy; and
- (j) Equal employment opportunities.

A-2826 INFORMATION FOR STUDENTS

- A-2826.1 A nonpublic special education school or program shall provide each student with full and up to date information about its program, including at minimum its academic policies, IEP process, policies on behavior management, student rights and privileges and the process for making a confidential complaint about the services or treatment he or she is receiving at the school or program.

A-2827 INFORMATION FOR PARENTS

- A-2827.1 A nonpublic special education school or program shall provide every parent with complete and up to date information about its program, including at minimum its academic policies, IEP process, policies on behavior management, student rights and privileges and the process for a parent to make a complaint about the services or treatment a student is receiving at the school or program.
- A-2827.2 In addition to the information set forth in the above subsection, the nonpublic special education school or program shall provide information to all parents regarding monitoring by OSSE, including the fact that students may be asked to participate in interviews or other fact-gathering activities with OSSE representatives.

A-2828 FACILITIES

- A-2828.1 A nonpublic special education school or program shall have current licenses, approvals, and certificates of inspection by state and local agencies, covering safety, fire, lead paint, health, building code, Americans with Disabilities Act and any other inspections that may be required by local or state authorities.

A-2829 PUBLIC ACCOUNTABILITY

- A-2829.1 A nonpublic special education school or program shall maintain and keep up to date on an internet website, and make available for public review upon request, the following information:
- (a) Statement of purpose, including the number of students served and disability categories served;
 - (b) Description of the education program;
 - (c) Organizational chart and student/teacher ratios;

- (d) Discipline and behavior management policies;
- (e) Rates and tuition information;
- (f) Professional staff listing, including qualifications;
- (g) Licensure, certifications and accreditation status; and
- (h) Management and ownership.

A-2829.2 The following documents shall be maintained onsite at the school and made available for review upon request:

- (a) Documentation of current certificate of approval by the District of Columbia and all other relevant certifications and licensing bodies;
- (b) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws; and
- (c) Required professional certifications and licenses of all school personnel.

A-2830 INCIDENT REPORTING

A-2830.1 A separate written incident report shall be prepared for each student subject to the use of restraints or seclusion within twenty four (24) hours of the incident in accordance with this chapter.

A-2830.2 Any other incident involving physical injury to a student shall be reported in writing within twenty four (24) hours to the sending LEA, any other involved District of Columbia agency, and the student's parent(s).

A-2831 EMERGENCY REPORTING

A-2831.1 In the event of fire or any other form of emergency situation, the nonpublic special education school or program must provide the sending LEA and OSSE with written notification as soon as is feasible, and status reports thereafter as requested by OSSE.

A-2832 MATERIAL EVENT REPORTING

- A-2832.1 The nonpublic special education school or program shall notify the LEA and OSSE of a material event with a written report about such change of circumstances no later than fifteen (15) calendar days after the date of such event.

A-2833 INVOICING

- A-2833.1 A nonpublic special education school or program shall invoice OSSE according to the District of Columbia's rates established under this chapter, policies and procedures for payment of nonpublic special education schools, programs and providers. Such rates, policies and procedures shall be published and made available by OSSE.

- A-2833.2 An invoice shall include the following information for each student:

- (a) Student name, date of birth, and a unique student identification number if one has been assigned;
- (b) Tuition rate per diem;
- (c) the number of days billed for on the invoice;
- (d) An itemization of related services provided, frequency of service including the unit of service per hour or per diem as appropriate;
- (e) the student's Medicaid number; and
- (f) An attendance report including specific days of attendance and absence (identified as excused and unexcused) for each student included in an invoice.

- A-2833.3 A nonpublic special education school, program or related service provider shall not use any bundled or packaged rate methodology when invoicing the District of Columbia government. The District of Columbia shall not pay any bundled or packaged rate.

A-2834 MEDICAID

- A-2834.1 A nonpublic special education school or program shall adhere to all federal and District of Columbia laws and regulations governing Medicaid reimbursable services, including, but not limited to, documentation of all instances of IEP health-related services delivered to District of Columbia students.

- A-2834.2 A nonpublic special education school, program or related service provider shall keep organized and confidential records that detail client specific information regarding all specific Medicaid reimbursable services provided for each

individual recipient of services and retain those records for review. All such documentation shall include with the invoice:

- (a) Recipient's name, date of birth, and Medicaid or unique identification number;
- (b) Date, start time, and location of the services;
- (c) Service Provider name and contact information;
- (d) A description of the services provided, including diagnosis code and level of service;
- (e) Duration (or unit) of service, with start time;
- (f) Therapy modality (individual or group, including the size of the group);
- (f) Dated progress notes with an original signature by the service provider, including credentials (and signature of qualified supervisors for service providers requiring supervision);
- (g) A copy of provider health evaluation(s) and assessments(s);
- (h) A copy of the current IEP authorizing related service(s);
- (i) Individual service provider daily documentation of the nature of the service encounters and progress notes, signed and dated by the provider, and listing the provider's credentials; and
- (j) An attendance report including specific days of attendance and absence (identified as excused and unexcused) for each student included in an invoice.

- A-2834.3 The frequency, duration and scope of services shall be specified in the student's IEP consistent with the IDEA and its implementing regulations.
- A-2834.4 All services shall be documented within fifteen (15) calendar days of delivery and submitted using the format required by the District of Columbia. .
- A-2834.5 As requested by OSSE, a nonpublic special education school or program shall enter into a contract confirming its rates for Medicaid purposes and consistent with the Placement Act requirements.

A-2834.6 Sending LEAs shall give student placement preference to facilities that are Medicaid eligible and qualify with regard to providing services specified by an IEP.

A-2835 ANNUAL CERTIFICATE OF COMPLIANCE

A-2835.1 Pursuant to D.C. Official Code §38-2561.08, a nonpublic special education school or program shall certify compliance with this chapter not less than forty-five (45) calendar days prior to the start of the school year, using such forms as shall be provided by OSSE.

A-2836 DISCLOSURE OF INFORMATION

A-2836.1 A nonpublic special education school or program shall make available to OSSE, on request, information on all aspects of the school's program(s), staff credentials, certification by agencies other than OSSE, information regarding any complaints made, health and safety information, the individual records of District of Columbia students, and any other information that OSSE may reasonably require in exercising its duties as the SEA.

A-2837 MONITORING

A-2837.1 Pursuant to D.C. Official Code §38-2561.09, OSSE shall schedule periodic monitoring visits to each nonpublic special education school or program at least once during the validity of each certificate of approval, to verify compliance with this chapter, federal and local law. Prior to the monitoring visit, a nonpublic special education school or program shall inform all parents of enrolled District of Columbia students that a scheduled monitoring visit shall occur.

A-2837.2 Representatives of OSSE may make unannounced visits to a nonpublic special education school or program, review student records, and conduct interviews with students and staff. OSSE, as the District of Columbia's SEA, is entitled to immediate access to all student records for monitoring and investigative purposes and shall maintain their confidentiality as required by law. The nonpublic special education school or program shall cooperate in full with any requests for documentation, file review, interviews and access to the facility during an unannounced visit. OSSE may interview students on site at a school or program without school representatives being present. OSSE shall make its requests in a manner least intrusive to the delivery of services to students.

A-2837.3 OSSE shall issue to the nonpublic special education school or program a monitoring report at least once in every period of validity for a certificate of approval, to include any findings of noncompliance with D.C. Official Code §38-2561 and this chapter.

A-2838 INITIAL APPLICATION FOR CERTIFICATE OF APPROVAL

- A-2838.1 A nonpublic special education school or program seeking a certificate of approval from OSSE shall complete an initial application. Any application shall be made on OSSE's standard form, which shall comply with the requirements of D.C. Official Code §38-2561.07(e).
- A-2838.2 An initial application by a nonpublic special education school or program shall be made by the nonpublic special education school or program itself. OSSE will not accept an application for a certificate of approval completed and submitted by a parent, advocate, or LEA.
- A-2838.3 OSSE shall not accept or consider incomplete applications.
- A-2838.4 OSSE shall review each application submitted for an initial Certificate of Approval according to the criteria specified in this chapter and shall consult with other District agencies and agencies of other state and local governments as applicable.
- A-2838.5 OSSE shall not grant approval to the educational component of a nonpublic special education residential school or program until all licenses required by local or state law have been awarded. OSSE shall not grant approval to any nonpublic special education school or program lacking a physical location at the time of its application.
- A-2838.6 A certificate of approval shall become effective as prescribed by OSSE. OSSE may, at its discretion, schedule site visits, interviews, or other inspections, and/or consult with counterparts in the host state, District agencies or other relevant stakeholders prior to granting a certificate of approval. OSSE shall provide the applicant with written notice of its actions and the reasons for such actions.

A-2839 EXPIRATION OF A CERTIFICATE OF APPROVAL

- A-2839.1 It is the responsibility of the nonpublic special education school or program to submit a timely application for renewal of its certificate of approval. The failure to submit a timely renewal application shall result in an automatic expiration of the certificate of approval as of the date of expiration on the certificate of approval. Upon expiration, the school or program shall be out of compliance with the Placement Act and may not serve District students.

A-2840 RENEWAL OF AN EXISTING CERTIFICATE OF APPROVAL

- A-2840.1 A nonpublic special education school or program may have its Certificate of Approval renewed for up to three years at a time. An application for renewal must be submitted not later than one hundred and eighty (180) calendar days prior to the expiration date of the current certificate of approval, using a standard renewal form which shall be published on OSSE's website. It is the responsibility

of the nonpublic special education school or program to apply for renewal of certification.

A-2840.2 Any corrective actions required by OSSE and in place at the time of application for renewal of a certificate of approval must be completed as a condition of renewal.

A-2840.3 OSSE may revoke or decline to renew a certificate of approval for any of the reasons pursuant to D.C. Official Code §38-2561.11 and this chapter.

A-2841 EXTENSION OF A CERTIFICATE OF APPROVAL

A-2841.1 OSSE may in its discretion extend a certificate of approval or grant a provisional certificate of approval pending final action on an application.

A-2841.2 A nonpublic special education school or program must submit an application form for any new branch or campus not covered by the existing certificate of approval.

A-2841.3 OSSE may modify a certificate of approval to allow a nonpublic special education school or program to reflect a material change at the school, to incorporate campus or program additions or changes, or as OSSE otherwise deems appropriate.

A-2842 FINDINGS, CORRECTIVE ACTION AND PROCEEDING TO CHANGE CERTIFICATE OF APPROVAL STATUS

A-2842.1 At least once within the period of validity for each certificate of approval, OSSE shall, based on its monitoring activities, make written findings, documenting noncompliance with the Placement Act and other applicable laws and rules.

A-2842.2 Any finding of noncompliance that constitutes a violation of D.C. Official Code §38-2561.11(a) shall be clearly documented.

A-2842.3 In the event OSSE determines a special education school or program has violated D.C. Official Code §38-2561.11(a), OSSE may in its discretion take action with regard to the status of the school's certificate of approval.

A-2842.4 If OSSE makes one or more findings of noncompliance, whether or not such findings constitute violations of D.C. Official Code §38-2561.11(a), OSSE may order the nonpublic special education school or program to correct the violation(s) within a specific timeframe, and may require the school or program to produce and implement a corrective action plan. Failure to comply with a corrective action, may, at OSSE's discretion, result in a notification of a proceeding to deny, revoke, refuse to renew or suspend the nonpublic special education school or program's certificate of approval.

A-2842.5 Pursuant to D.C. Official Code §38-2561.11(b), OSSE may, in its discretion, issue a notification of a proceeding to deny, revoke, refuse to renew or suspend a certificate of approval at any time OSSE makes a finding of a violation of D.C. Official Code §38-2561.11(a), with or without providing the school or program an opportunity to correct findings that constitute violations of the law or rules thereunder.

A-2842.6 Pursuant to D.C. Official Code §38-2561.11(b), a written notification of a proceeding to the nonpublic special education school or program shall specify the violations of D.C. Official Code §38-2561.11(a) and the action to be taken, including an intention to deny, revoke, refuse to renew or suspend a certificate of approval; as well as notice of an opportunity for a hearing. In the event a school or program does not timely request a hearing under section A-2843 of this chapter and the Placement Act, OSSE's intended action shall be final and take effect. OSSE shall deliver notice to the school or program of the final action.

A-2843 CERTIFICATE OF APPROVAL REVIEW PROCESS

A-2843.1 A nonpublic special education school or program may request a hearing and opportunity for an oral presentation to review a notification of a violation and intent to take action regarding the school or program's certificate of approval under D.C. Official Code §38-2561.11(a).

A-2843.2 A nonpublic special education school or program shall request such hearing in writing, no later than thirty (30) days after the receipt date of a written notification of violation and intent to take action regarding the school or program's noncompliance. A hearing request involving a nonpublic special education school or program's aversive intervention policy or practice shall be submitted to OSSE in writing not later than ten (10) days after the receipt date of the written notification of noncompliance.

A-2843.3 The hearing request and all submissions shall be addressed to the attention of the Office of the State Superintendent of Education, Office of the General Counsel, Attn: Certificate of Approval Review.

A-2843.4 The hearing shall be conducted by an independent panel (panel) composed of three (3) but not more than five (5) members selected by the State Superintendent of Education.

A-2843.5 The panel shall not contain any person who has participated in the determination being reviewed or who is a member of the OSSE Department of Special Education (DSE).

A-2843.6 The nonpublic special education school or program's written request for a hearing shall be submitted to the OSSE Office of General Counsel and shall include the following:

- (a) A concise statement of facts regarding each specific violation, finding, or action of which the school or program seeks review;
- (b) The specific basis for opposing each violation, finding or action subject to review, including the identification of any specific document submitted as part of the record to support the nonpublic special education school or program's position;
- (c) The specific relief requested;
- (d) The statutory and factual justification for the relief requested;
- (e) Two copies of all documentary evidence and an index of the documents for consideration by the panel; and
- (f) A request for an oral presentation consistent with section A-2843.10 if the school or program seeks an opportunity for an oral presentation at the hearing.

A-2843.7 OSSE shall respond in writing to the school or program's submissions with regard to the hearing, not later than five (5) days prior to the hearing date. OSSE's submission shall conform to the process set forth in this chapter.

A-2843.8 The hearing panel's decision shall be based upon the written record including the nonpublic special education school or program's written submission and documentary evidence in support of its request; OSSE's monitoring report or written determination of violations including any attachments; OSSE's notification of noncompliance; a response by DSE; and any other documentation considered relevant by the panel, including additional documentation that may be requested by the independent panel.

A-2843.9 The hearing shall be held not later than thirty (30) days after the receipt date of the written request for a hearing, except that a hearing shall be held within fifteen (15) days after the receipt date of a request for a hearing in a case involving aversive intervention policies or practice.

A-2843.10 A written request for oral presentation before the panel shall be submitted at the same time as and included with a request for a hearing. The special education school or program and DSE shall make a representative available to appear before the panel at the time scheduled by the panel. The length of an oral presentation shall be limited to twenty (20) minutes unless otherwise specified by the panel.

A-2843.11 The nonpublic special education school or program shall continue to provide special education and related services to a District of Columbia student consistent

with a student's IEP; and may submit invoices for such services consistent with this chapter and a final decision by the panel.

- A-2843.12 The written decision of the panel shall be issued within ten (10) days after a hearing is concluded.
- A-2843.13 Pursuant to D.C. Official Code §38-2561.11(b), the decision of the panel is final and not appealable.
- A-2843.14 OSSE shall publish the final decision issued by the panel, and take appropriate action in conformance with the final decision, including specific notification to the nonpublic special education school or program, and other relevant parties as OSSE deems appropriate including LEAs, and other government officials within or outside the District of Columbia.

A-2844 RATE SETTING

- A-2844.1 OSSE shall establish and publish on an annual basis, or more frequently as needed, the fees to be paid for tuition and related services to special education schools and programs that provide special education and related services to students with disabilities funded by the District of Columbia.
- A-2844.2 *Day School.* OSSE shall establish the annual per-student tuition rate for a nonpublic special education day school or program at an amount equal to at OSSE's discretion either the rate:
- (a) Established by the UPSFF for a student enrolled in a District of Columbia Public school or public charter school; including the special education foundation level; supplements for specific levels and types of special education services to the extent such services are included in the student's IEP and an indirect cost rate deemed reasonable by OSSE in reference to federally established indirect cost rates; or
 - (b) Resulting from a rate setting methodology deemed reasonable by OSSE and used by the state in which the school is located to establish the rate paid by that state for its publicly funded students.
- A-2844.3 *Residential School.* OSSE shall establish the annual per-student tuition rate for a nonpublic special education residential school or program at an amount equal to, at OSSE's discretion, either the rate:
- (a) Established by the UPSFF for a student enrolled in a District of Columbia Public school or public charter school; including the special education foundation level; supplements for residential schools and specific levels

and types of special education services to the extent such services are included in the student's IEP; and an indirect cost rate deemed reasonable by OSSE in reference to federally established indirect cost rates; or

- (b) Resulting from a rate setting methodology deemed reasonable by OSSE and used by the state in which the school is located to establish the rate paid by that state for its publicly funded students.

A-2844.4 In establishing rates under this section, OSSE shall use the UPSFF rate submitted to the U.S. Congress in the District of Columbia's annual Fiscal Year Budget Support Act, or other legislation, and used by the District of Columbia to provide the local operational budget for the District of Columbia Public Schools and to make payments to District of Columbia public charters schools in the same year.

A-2844.5 In the event the final version of the UPSFF for a fiscal year enacted into law after Congressional review differs from the UPSFF submitted to the U.S. Congress under the Home Rule Charter, OSSE shall reconcile to the final enacted UPSFF, the amounts already paid to a nonpublic special education school, program or related service provider within sixty (60) business days after the effective date of the final UPSFF in the following manner:

- (a) A debit or a credit shall be posted to each payee's account as appropriate;
- (b) Cash reimbursement may be considered only in exceptional circumstances based upon a written justification from the nonpublic special education school, program or related service provider, and accepted by OSSE.

A-2844.6 The rate for an evaluation or related service provided to a student enrolled in a nonpublic special education day or residential school or program shall be aligned to the rate for such evaluation or service established by the District of Columbia Department of Health Care Finance (DHCF). Applicable rates shall be posted on the OSSE website. In the absence of an established DHCF rate for a service, OSSE shall establish a rate that reflects market conditions.

A-2844.7 Rates for all non-tuition and non-related services in a nonpublic residential school or program (i.e., not a PRTF residential program) shall be, at OSSE's discretion, the lesser of:

- (a) Rate(s) established by the state in which the facility is located; or
- (b) Supplemental special education residential add-on rate established by the UPSFF for a student enrolled in a District of Columbia Public School or public charter school.

A-2844.8 The rate for a residential school or program that qualifies as a PRTF shall be established under this section; and the residential school or program rate

established under section A-2844.3 of this chapter shall not apply. A PRTF providing services to a District of Columbia student must apply for and maintain a current certification issued by the District of Columbia's Department of Mental Health and enroll in the District's Medicaid Program.

- (a) The per-diem rate for treatment, including all related services, at a PRTF shall be determined in the manner prescribed by the District of Columbia DHCF rules;
- (b) The PRTF shall submit invoices directly to the District's Medicaid Program for federally reimbursable services provided to Medicaid enrolled District of Columbia students;
- (c) Unless otherwise pre-authorized by OSSE, PRTFs shall seek reimbursement for all non-tuition costs for Medicaid-eligible District of Columbia students placed at a PRTF by LEAs in conformance with the District of Columbia reimbursement principles set forth in section 948 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Standards for Participation of Residential Treatment Centers for Children and Youth" and section 949 of Chapter 9 of Title 29 DCMR, entitled "Reimbursement Principles and Limitations"; and
- (d) PRTFs providing services to District of Columbia students who are not Medicaid-eligible, shall invoice OSSE at the same reimbursement rate applicable to District of Columbia Medicaid beneficiaries.

A-2844.9 A nonpublic special education school, program, evaluator or related service provider shall obtain from OSSE prior written approval for an evaluation or service rate(s) not aligned to rates established by DHCF. OSSE shall not pay for services unless the rate(s) is specifically approved by OSSE as part of the most recent certificate of approval process or through a separate rate review process.

A-2844.10 OSSE shall publish and maintain on its website, a list of nonpublic special education schools and programs providing special education services to District of Columbia students.

A-2844.11 OSSE shall be responsible for processing all payments for services provided to students attending nonpublic special education schools or programs paid for by the District of Columbia and shall:

- (a) Issue written guidance with regard to OSSE's payment policies and procedures;
- (b) Issue written guidance for dispute resolution with regard to payments made under the Placement Act and this chapter;

- (c) Publish rate and payment related guidance on OSSE's website; and
- (d) Publish the components of the annual rate calculation formula on the OSSE website.

A-2844.12 The exclusive means for a nonpublic special education school or program to appeal a rate established by OSSE under the Placement Act and in this chapter is the reconsideration review process before the rate reconsideration panel established by the Placement Act.

A-2844.13 The rate established by OSSE shall remain in effect pending a final Decision of the rate reconsideration panel.

A-2844.14 A rate is eligible for reconsideration only for matters that relate to the ability of the nonpublic special education school or program to meet the requirements of an IEP for a student placed by a District government agency. In order to be heard and considered, a nonpublic special education school or program's written request for reconsideration of an aggregate rate established under this chapter shall:

- (a) Be filed with OSSE within thirty (30) calendar days after the school or programs receives notification of the rate established by OSSE under this chapter;
- (b) State with specificity the relief requested;
- (c) Include documented data and analysis to justify the request for a specific rate; and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
- (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.

A-2844.15 The rate reconsideration panel may in its discretion review individual exceptions for a student the panel determines has unique or highly specialized needs that cannot be properly addressed and funded through the aggregate rate. In the case where reconsideration is being requested for an individual exception to an aggregate rate, the requesting party shall:

- (a) Justify with specificity the necessity to pay for services at a rate in excess of an established rate;
- (b) Demonstrate the existence of the student's unique or highly specialized needs;
- (c) Include documented data and analysis to justify the request for a

specific rate; and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and

- (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.

A-2844.16 Upon receipt of a timely request for reconsideration that conforms with the requirements of the Placement Act and this chapter, OSSE shall convene and provide administrative support to the rate reconsideration panel in conformance with the Placement Act. OSSE shall establish guidance with regard to the panel hearing process and member conduct, including at a minimum:

- (a) Confidentiality requirements;
- (b) Member duties, responsibilities, and prohibitions against representations or public statements related to panel membership; and
- (c) The rate reconsideration hearing procedures including a requirement to issue a panel decision within forty five (45) days after the date of receipt of a request for reconsideration and specifications regarding the official record.

A-2844.17 The rate reconsideration panel may require a nonpublic special education school or program requesting reconsideration of a rate to provide the panel on a specific timeline with any further documentary evidence required to make a decision.

A-2845 RATE SCHEDULE

A-2845.1 The rate schedule governed by section A-2844 shall include the following information for the relevant school year:

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION NONPUBLIC SPECIAL EDUCATION SCHOOLS AND PROGRAMS, EVALUATIONS & RELATED SERVICES RATE SCHEDULE

Based on the relevant constituent parts of the District of Columbia fiscal year 2011 District of Columbia Uniform Per Student Funding Formula (UPSFF), and rates aligned to the District of Columbia Department of Health Care Finance.

Tuition for Day Schools or Programs:

UPSFF Special Education Schools Per Pupil Allocation		\$10,466
Plus: UPSFF Level 4: Special Education Per Pupil Supplemental	+	\$25,315
<i>Sub-Total</i>		\$35,781
Multiplied by: Indirect Cost Rate (8.24%)	x	1.0824
Day School Base Tuition (180 school days at \$215.16/day)		\$38,730.35

Tuition Category	Rate	Rationale
Base Tuition (180 school days)	\$38,730.35*	UPSFF Special Education Schools Per Pupil Allocation + UPSFF Level 4: Special Education Per Pupil Supplemental
School Days Beyond 180 Days	\$215.16 **	Base Tuition ÷ 180 days = \$215 per day

* To be billed per diem (\$215.16/day) according to all relevant regulations.

** This rate is for any school day, beyond the required minimum of one hundred eighty (180) regular instructional school days, which meets the six (6) hour minimum instructional school day requirement. Any school day, including Extended School Year (ESY) programming, that does not meet the six (6) hour minimum instructional school day requirement shall be billed on a pro rata basis.

Tuition, Room & Board for Schools or Programs:

Tuition: The tuition rate for nonpublic special education a day or a residential school or programs shall be, at OSSE's discretion, the lesser of the tuition rate established above or the rate resulting from a rate setting methodology deemed reasonable by OSSE and used by the state in which the school is located to establish the rate paid by that state for its publicly funded students. *See* proposed Rule A-3844.2 and A-2844.3.

Room & Board for Psychiatric Residential Treatment Facilities (PRTFs): The rate for room & board and all other non-tuition and non-related services in a Psychiatric Residential Treatment Facilities shall be determined in the manner prescribed by the District of Columbia Department of Health Care Finance. *See* Proposed Rule A-2844.8.

Room & Board (Non-PRTFs): The rate for room & board and all other non-tuition and non-related services in a nonpublic residential school or program shall be, at OSSE's discretion, the lesser of comparable rates paid by the state in which the facility is located or the supplemental special education residential add-on rate established by the UPSFF for a student enrolled in a District of Columbia Public Schools or public charter school. *See* Proposed Rule A-2844.7. The UPSFF Level 4: Special Education – Residential add-on rate for SY 2010-11 is \$26,156.

EVALUATION AND RELATED SERVICES:

The following rates are based upon the comparable relevant rates for evaluations and related service established by the District of Columbia Department of Health Care Finance (DHCF), the proposed evaluation and related services rates for evaluations and related services provided by a

nonpublic special education school, program or related service provider to District of Columbia students are as follows:

Evaluations:

Evaluation	Relevant DHCF Procedure Code Description(s)	Maximum Hourly Rate*	Maximum Total Cost**
Audiology Evaluation	Evaluation of speech, language, voice, communication, auditory processing, and/or aural rehabilitations status	\$ 78.36	\$ 313.44
Occupational Therapy Evaluation	Occupational therapy evaluation or re-evaluations	\$ 87.48	\$ 349.92
Physical Therapy Evaluation	Physical therapy evaluation or re-evaluation	\$ 80.01	\$ 320.04
Psychiatric Evaluation	<ul style="list-style-type: none"> - Psychiatric diagnostic interview examination - Psychiatric diagnostic interview examination using play equipment, physical devices, language interpreter, or other mechanisms of communication 	\$ 143.75	\$1,437.50
Comprehensive Psychological Evaluation	<ul style="list-style-type: none"> - Psychological testing (includes psycho diagnostic assessment of emotionality, intellectual abilities, personality and psychopathology, e.g., MMPI, Rorschach, WAIS), per hour of the psychologist's or physician's time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report - Neurobehavioral status exam (clinical assessment of thinking, reasoning and judgment, e.g., acquired knowledge, attention, language, memory, planning and problem solving, and visual spatial abilities), per hour of the psychologist's or physician's time, both face-to-face time and interpreting test results and preparing the report - Neuropsychological testing battery (e.g., Halstead-Reitan, Luria, WAIS-R) with interpretation and report, per hour 	\$ 143.75	\$1,437.50

Evaluation	Relevant DHCF Procedure Code Description(s)	Maximum Hourly Rate*	Maximum Total Cost**
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Speech-Language Pathology Evaluation	Evaluation of speech, language, voice, communication, auditory processing, and/or aural rehabilitations status	\$ 87.76	\$ 351.04
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* This is the maximum hourly reimbursement to be paid by OSSE for the specified evaluation. Prior written approval shall be obtained from OSSE for a service not listed or for rate not aligned to rates established by DHCF, unless a rate(s) is specifically approved by OSSE as part of the most recent certificate of approval process or through a separate rate review process. See Proposed Rule 5 DCMR A-2844.7.

** This is the maximum total cost for the specified evaluation.

Related Services:

Related Service Category	Related DHCF Procedure Code Description(s)	Maximum Hourly Rate*
Audiology	<ul style="list-style-type: none"> - Auditory rehabilitation; prelingual hearing loss - Auditory rehabilitation; postlingual hearing loss - Treatment of speech, language, voice, communication and/or auditory processing disorder; individual - Treatment of speech, language, voice, communication and/or auditory processing disorder; individual 	\$ 78.36
Counseling – Group [‡]	Group psychotherapy	\$ 16.64
Counseling - Individual (Provider: LPC)	<ul style="list-style-type: none"> - Individual psychotherapy, insight oriented, behavior modifying and/or supportive, face-to-face with the patient - Individual psychotherapy, interactive, using play equipment, physical devices language interpreter, or other mechanisms of non-verbal communication, face-to-face with the patient 	\$ 49.88
Counseling - Individual (Provider: Psychologist)	<ul style="list-style-type: none"> - Individual psychotherapy, insight oriented, behavior modifying and/or supportive, face-to-face with the patient - Individual psychotherapy, interactive, using play equipment, physical devices language interpreter, or other mechanisms of non-verbal communication, face-to-face with the patient 	\$ 78.66
Counseling - Individual (Provider: Psychiatrist)	<ul style="list-style-type: none"> - Individual psychotherapy, insight oriented, behavior modifying and/or supportive, face-to-face with the patient - Individual psychotherapy, interactive, using play equipment, physical devices language interpreter, or other mechanisms of non-verbal communication, face-to-face with the patient 	\$ 143.75
Occupational Therapy-Group [‡]	Therapeutic procedure(s), group (2 or more individuals)	\$ 29.16
Related Service Category	Related DHCF Procedure Code Description(s)	Maximum Hourly Rate*
Occupational	Therapeutic procedure(s), group (2 or more individuals)	\$ 9.40

Therapy-Group [‡] (Provider: Aide)		
Occupational Therapy-Individual	- Therapeutic procedure, one or more areas; therapeutic exercises to develop strength and endurance, range of motion and flexibility - Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance)	\$ 87.48
Occupational Therapy-Individual (Provider: Aide)	Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance)	\$ 28.20
One-to-One Aide: Behavior	One-to-One Aide: Behavior	\$ 16.64
One-to-One Aide: Personal Care	One-to-One Aide: Personal Care	\$ 9.28
Physical Therapy-Group [‡]	- Therapeutic procedure(s), group (2 or more individuals)	\$ 26.68
Physical Therapy-Group [‡] (Provider: Aide)	- Therapeutic procedure(s), group (2 or more individuals)	\$ 14.20
Physical Therapy-Individual	- Therapeutic procedure, one or more areas; therapeutic exercises to develop strength and endurance, range of motion and flexibility - Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance)	\$ 80.00
Physical Therapy-Individual (Provider: Aide)	Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance)	\$ 42.60
Speech Language Therapy, Group [‡]	Speech Language Therapy, Group	\$ 29.24
Speech Language Therapy, Individual	Speech Language Therapy, Individual	\$ 87.76

* This is the maximum hourly reimbursement to be paid by OSSE for the specified related service. Prior written approval shall be obtained from OSSE for a service not listed or a rate not aligned to rates established by DHCF, unless a rate(s) is specifically approved by OSSE as part of the most recent certificate of approval process or through a separate rate review process.

[‡] To be billed per student within professional practice guidelines.

A-2899 DEFINITIONS

Any term used in this chapter that is not otherwise defined herein, has the same meaning as the D.C. Official Code §§ 38-2561 *et seq.* and the IDEA 20 U.S.C. §§ 1400 *et seq.*

Americans with Disabilities Act - Americans with Disabilities Act of 1990, (P.L. 101-336, 104 Stat 327, approved July 26, 1990) as amended, 42 U.S.C. §§ 12101 *et seq.*

Abuse - as defined in D.C. Official Code §16-2301.

Behavior Intervention Plan or **BIP** – is a written plan that describes: how an educational setting will be changed to improve the behavioral success of a student; the teaching that will occur to give the student alternative ways of behaving; the consequences that will be provided to (a) encourage positive behavior, (b) limit inadvertent reward of problem behavior, and (c) where appropriate, discourage problem behavior; and procedures for ongoing assessment to determine if the BIP is being implemented correctly and if implementation is resulting in benefits for the student.

Bundled or Package Rate Methodology - use of a single invoice for groups of services to students with disabilities without documentation of the actual delivery of services or their costs on an individual per student basis, and which therefore does not qualify for Medicaid reimbursement under federal guidance.

Days – calendar days unless otherwise noted.

Evaluation - an assessment conducted by a professional certified to conduct such an assessment for students suspected of or diagnosed with a disability defined herein.

Extended school year services or **ESY services** – are special education and related services that are provided to a student with a disability beyond the normal school year in accordance with a student's IEP, provided at no cost to the parents of the student, and meet the standards of the SEA.

Family Educational Rights and Privacy Act or FERPA - Family Educational Rights and Privacy Act of 1974, Elementary and Secondary Education Amendments Act, approved August 21, 1974 (P.L. 93-380; 88 Stat 571 as amended , 20 U.S.C. § 1232g); and implementing rules at 34 C.F.R. Part 99.

Full approval status - the recognition by OSSE that a nonpublic special education school or program has demonstrated an ability to comply with the standards of this Chapter, and has successfully completed an application for a certificate of approval.

Functional behavior assessment or **FBA** – is a process for identifying (a) observable problem behaviors, (b) the contexts or routines where the problem behaviors are most likely, (c) the specific antecedent events within a context or routine that reliably predict occurrence of problem behaviors, and (d) the consequences that appear to maintain the problem behavior.

Individuals with Disabilities Education Act or IDEA - Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773, as amended, 20 U.S.C. §§ 1400 *et seq.*).

Individualized education program or IEP - a written plan that specifies the special education and related services to be provided to meet the unique educational needs of a student with a disability, in conformance with the IDEA (See 20 USC § 1414(d)).

Material event – a change of circumstances or requirements related to a nonpublic special education school or program’s permit or license; a change in accreditation status; change of financial status or court protection; a major change in program offerings; a change in ownership, management or leadership of the school or program including administrative director, principal or chief executive officer.

Mechanical restraint - the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

Neglect - as defined in D.C. Official Code § 16-2301.

Nonpublic special education school or program - a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term “nonpublic special education school or program” shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting.

OSSE - the Office of the State Superintendent of Education for the District of Columbia.

Parent - as defined in the IDEA, 20 U.S.C. § 1401(23) and 34 C.F.R. 300.30.

Personnel – any individual on site at a special education school or program or a person who works with a student on a full-time, part-time, temporary or contractual basis who is paid for services or volunteers service without monetary or other compensatory benefit.

Physical restraint - the use of bodily force to limit a student’s freedom of movement.

Placement Act - the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 *et seq.*) (2009 Supp.).

Probationary approval status - a demotion from full approval status, granted by OSSE, that requires the nonpublic special education school or program to develop and implement a corrective action plan and timelines dictated by OSSE.

Prone restraint - the use of force and/or use of a physical device to hold a student face down on the floor.

Provider - a facility or person providing a special education or related service to a student with a disability.

Provisional approval status - the less than full approval status granted by OSSE to a nonpublic special education school or program pending the submission of all documentation required for the satisfactory completion of a certificate of approval application.

Psychiatric residential treatment facility or PRTF - a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards recognized by the state in which the facility is located and provides inpatient psychiatric services for individuals under the age of twenty-two (22) in conformance with the federal requirements set forth in sections 441.151 through 441.182 of Title 42 of the Code of Federal Regulations (C.F.R.).

Rate - a fee for a special education service, including the annual or per-diem cost paid to each nonpublic special education day or residential school (including PRTFs) or program, for tuition, and related services delivered in conformance with an IEP, unless otherwise specified in this chapter.

Receipt Date—the date of actual receipt for hand delivered documents and documents sent electronically to a designated contact; or three days after the postmark date of transmittal.

Rehabilitation Act- The Rehabilitation Act of 1973, approved September 26, 1973 (P.L. 93-112, 87 Stat 394, as amended, U.S.C. § 12101 *et seq.*).

Related Service - as defined in the IDEA, 20 U.S.C. § 1401(26); and 34 C.F.R 300.34(a)

Review Panel - the Rate Reconsideration Panel established by the Placement Act, D.C. Official Code § 38-2561.14.

Seclusion - the involuntary confinement of a student alone in a room or area from which he or she is physically prevented from leaving, or from which as student believes he or she may not leave, whether or not in a locked area.

Sending LEA – refers to the local education agency (LEA) at which the student remains enrolled while attending a nonpublic special education school or program, that remains responsible for ensuring the provision of FAPE to the student and compliance with the IDEA.

Special education - specialized services for students identified as having disabilities, as provided in section 101 of the IDEA, or students who are individuals with a disability as provided in section 7(8)of the Rehabilitation Act of 1973, 29 U.S.C. § 706(8)).

Student with a disability - a student determined to have one of the conditions, disabilities or impairments listed in D.C. Official Code § 38-2561.01(14) or any other condition, disability, or

impairment described in Section 602(3) of the IDEA, 20 U.S.C. § 1401; or in Section 7(8) of the Rehabilitation Act, 29 U.S.C. § 796(8)).

Truancy - the absence of a school-age student from any portion of the school day without a valid excuse consistent with the requirements of the attendance and truancy requirements set forth in chapter A-21 of Title 5 of the DCMR.

Uniform per student funding formula or **UPSFF** - the schedule of rates established on a per-student basis to fund public education services in the District of Columbia Public Schools and public charter schools as currently codified at D.C. Official Code § 2901 *et seq.*

Current Section E-3813 of Chapter 38 of Title 5-E of the DCMR is deleted.

The District of Columbia Public Schools, Chancellor's Rate Directive, Blackman-Jones, No. 1, published July 18, 2008, will no longer apply to fees to be paid by OSSE.

Persons wishing to comment on this rule should submit their comments in writing to Office of the State Superintendent of Education, 810 First Street, N.E., 9th Floor, Washington, D.C. 20002, Attn: Jessica Morffi, Title 5, Chapter A-28; or Osse.publiccomment@dc.gov. All comments must be received by OSSE not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may be obtained from OSSE website at osse.dc.gov or at the above referenced location.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 09-13

(Text Amendment – 11 DCMR)

BZA Expedited Review Process - Technical Correction to § 3118

The Zoning Commission for the District of Columbia, pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799, D.C. Official Code § 6-641.07), hereby gives notice of its intent to amend the Board of Zoning Adjustment Rules of Practice and Procedure, Chapter 31 of DCMR Title 11. The Commission proposes to make technical changes to § 3118 so as to better differentiate between those persons and entities whose requests to remove an item from the expedited calendar will result in the automatic removal of the item and those persons and entities whose requests will be granted only if the Presiding Officer finds that their proffered testimony is relevant to the application. Because this change is technical in nature, the Commission will not be holding a public hearing on this application, as is allowed under Consent Calendar procedures set forth at 11 DCMR § 3030. Nor will these amendments be referred to the National Capital Planning Commission, both because of the technical nature of the changes and also because the amendments are to procedural rules.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

DCMR Title 11, ZONING, Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3118, EXPEDITED REVIEW, is proposed to be amended by:

- (1) Striking references in § 3118.6 to those persons and entities whose requests to remove an item will not automatically be honored;
- (2) Re-designating the text of § 3118.7 as § 3118.8 and renumbering the remaining provisions;
- (3) Replacing the text moved from § 3118.7 with text that lists those persons and entities whose requests to remove an item will not be automatically honored;
- (4) Revising the text in renumbered § 3118.8 to set forth the time for making those requests (as formerly stated in § 3118.6 (c)); and
- (5) Revising the text in renumbered § 3118.9 to clarify that the only basis for the Presiding Officer to grant or deny a non-automatic request is whether the proffered evidence is relevant to the Board's consideration of the application.

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If these revisions are made, § 3118 would read as follows:

3118 EXPEDITED REVIEW

- 3118.1 The purpose of this section is to create an expedited review process to be followed after an applicant waives its right to a hearing for an eligible application.
- 3118.2 An eligible application is an application for:
- (a) An addition to one-family dwelling or flat or new or enlarged accessory structures pursuant to § 223; or
 - (b) A park, playground, swimming pool, or athletic field pursuant to § 209.1.
- 3118.3 Subject to the removal process described in §§ 3118.6 and 3118.7, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board's next regularly scheduled session after:
- (a) The completion of the public notice procedures set forth in § 3118.4; and
 - (b) The completion of the ANC review period of thirty (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) calendar days.
- 3118.4 Notice of expedited review shall be given in the same manner and include the same information as required by §§ 3113.12 through 3113.16, except that references to "public hearing" or "hearing" shall mean "expedited review" and all other requirements of § 3113 shall apply with the same proviso.
- 3118.5 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also indicate:
- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described §§ 3118.6 and 3118.7; and
 - (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the date that the application was removed and continuing until the date of such hearing.

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- 3118.6 An application tentatively placed on an expedited review calendar will be removed and rescheduled for a hearing:
- (a) At the oral or written request of a Board member made at any time prior to the vote on the application;
 - (b) Upon the receipt of a timely filed request for party status in opposition to the application; or
 - (c) At the written request of the Office of Planning, if filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled.
- 3118.7 An application tentatively placed on an expedited review calendar also will be removed and rescheduled for a hearing if requested by the following entities or persons in accordance with § 3118.8, unless the request is denied by the Presiding Officer pursuant to § 3118.9:
- (a) The affected ANC(s) or affected Single Member District(s);
 - (b) The Councilmember representing the area in which the subject property is located or representing an area located within two-hundred feet (200 ft.) of the subject property; or
 - (c) The owner or occupant of any property located within two-hundred feet (200 ft.) of the subject property.
- 3118.8 A request to remove made pursuant to § 3118.7 shall:
- (a) Be filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled;
 - (b) Be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing; and
 - (c) Shall include a summary proffer of the testimony to be given at that time.
- 3118.9 The Presiding Officer shall grant a request to remove an application made pursuant to § 3118.7 unless the proffered testimony is irrelevant, in which case the request shall be denied.

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3118.10 Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.